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16
17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA
19

20 Maisie Kelly,

21 Plaintiff,

22 vs.

23 AmSher Receivables Management aka
24 AmSher Collection Services,

25 Defendant.

Case No.: '16CV1827 CAB JLB

COMPLAINT FOR DAMAGES

FOR VIOLATIONS OF:

- 1. THE TELEPHONE CONSUMER PROTECTION ACT;**
- 2. THE FAIR DEBT COLLECTION PRACTICES ACT; AND**
- 3. THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

JURY TRIAL DEMANDED

1 Plaintiff, Maisie Kelly (hereafter “Plaintiff”), by undersigned counsel, brings
2 the following complaint against AmSher Receivables Management aka AmSher
3 Collection Services (hereafter “Defendant”) and alleges as follows:
4

5 **JURISDICTION**

6 1. This action arises out of Defendant’s repeated violations of the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), repeated
8 violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*
9 (“FDCPA”), and repeated violations of the Rosenthal Fair Debt Collection Practices
10 Act, Cal. Civ. Code § 1788, *et seq.* (“Rosenthal Act”).
11

12 2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3), 15 U.S.C. §
13 1692k(d), Cal. Civ. Code 1788.30(f), 28 U.S.C. § 1331 and 28 U.S.C. § 1367.
14

15 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
16 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or
17 where Defendant transacts business in this district.
18

19 **PARTIES**

20 4. Plaintiff is an adult individual residing in San Diego, California, and is a
21 “person” as defined by 47 U.S.C. § 153(39) and Cal Civ. Code § 1788.2(g).
22

23 5. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3), and is a
24 “debtor” as defined by Cal. Civ. Code § 1788.2(h).
25
26
27
28

1 6. Defendant is a business entity located in Birmingham, Alabama, and is a
2 “person” as the term is defined by 47 U.S.C. § 153(39) and Cal Civ. Code §
3 1788.2(g).
4

5 7. Defendant uses instrumentalities of interstate commerce or the mails in a
6 business the principle purpose of which is the collection of debts and/or regularly
7 collects or attempts to collect debts owed or asserted to be owed to another, and is a
8 “debt collector” as defined by 15 U.S.C. § 1692a(6).
9

10 8. Defendant, in the ordinary course of business, regularly, on behalf of
11 itself or others, engages in the collection of consumer debts, and is a “debt collector”
12 as defined by Cal. Civ. Code § 1788.2(c).
13
14

15 **ALLEGATIONS APPLICABLE TO ALL COUNTS**
16

17 9. Upon information and belief, a financial obligation was allegedly
18 incurred by a person who is not a party to this lawsuit (hereafter “Debtor”).
19

20 10. Plaintiff is not the Debtor, has no location information regarding the
21 Debtor, and has no responsibility for repayment of Debtor’s debt.

22 11. Debtor’s alleged obligation arises from a transaction in which property,
23 services or money was acquired on credit primarily for personal, family or household
24 purposes, is a “debt” as defined by 15 U.S.C. § 1692a(5), and is a “consumer debt” as
25 defined by Cal. Civ. Code § 1788.2(f).
26
27
28

1 12. At all times mentioned herein where Defendant communicated with any
2 person via telephone, such communication was done via Defendant's agent,
3 representative or employee.
4

5 13. At all times mentioned herein, Plaintiff utilized a cellular telephone
6 service and was assigned the following telephone number: 619-XXX-7300 (hereafter
7 "Number").
8

9 14. Defendant placed calls to Plaintiff's Number in an attempt to collect a
10 debt.
11

12 15. The aforementioned calls were placed using an automatic telephone
13 dialing system ("ATDS") and/or by using an artificial or prerecorded voice
14 ("Robocalls").
15

16 16. When answering the calls from Defendant, Plaintiff was met with a
17 Robocall instructing her to enter an account number.
18

19 17. On multiple occasions Plaintiff informed Defendant that it was calling
20 the wrong number and demanded that Defendant to cease further calls.
21

22 18. Nevertheless, Defendant continued to call Plaintiff's Number using an
23 ATDS and/or Robocalls at an excessive and harassing rate.
24

25 19. Defendant's calls directly interfered with Plaintiff's right to peacefully
26 enjoy a service that Plaintiff paid for and caused Plaintiff a significant amount of
27 anxiety, frustration and annoyance.
28

COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47
U.S.C. § 227, et seq.**

20. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

21. The TCPA prohibits Defendant from using, other than for emergency purposes, an ATDS and/or Robocalls when calling Plaintiff's Number absent Plaintiff's prior express consent to do so. *See* 47 U.S.C. § 227(b)(1).

22. Defendant's telephone system has the earmark of using an ATDS and/or using Robocalls in that Plaintiff, upon answering calls from Defendant, heard a Robocall prompting her to enter an account number.

23. Defendant called Plaintiff's Number using an ATDS and/or Robocalls without Plaintiff's consent in that Defendant either never had Plaintiff's prior express consent to do so or such consent was effectively revoked when Plaintiff requested that Defendant cease all further calls.

24. Defendant continued to willfully call Plaintiff's Number using an ATDS and/or Robocalls knowing that it lacked the requisite consent to do so in violation of the TCPA.

25. Plaintiff was harmed and suffered damages as a result of Defendant's actions.

1 33. Defendant engaged in conduct, the natural consequence of which was to
2 harass, oppress, or abuse Plaintiff, in connection with the collection of a debt, in
3 violation of 15 U.S.C. § 1692d.
4

5 34. Defendant caused Plaintiff's phone to ring or engaged Plaintiff in
6 telephone conversations repeatedly or continuously, with the intent to annoy, abuse
7 and harass Plaintiff, in violation of 15 U.S.C. § 1692d(5).
8

9 35. The foregoing acts and/or omissions of Defendant constitute numerous
10 and multiple violations of the FDCPA, including every one of the above-cited
11 provisions.
12

13 36. Plaintiff was harmed and is entitled to damages as a result of Defendant's
14 violations.
15

16
17 **COUNT III**

18 **VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION**
19 **PRACTICES ACT, Cal. Civ. Code § 1788, et seq.**

20 37. Plaintiff incorporates by reference all of the above paragraphs of this
21 complaint as though fully stated herein.
22

23 38. The Rosenthal Act was passed to prohibit debt collectors from engaging
24 in unfair and deceptive acts and practices in the collection of consumer debts.
25

26 39. Defendant caused Plaintiff's telephone to ring repeatedly or continuously
27 to annoy Plaintiff, in violation of Cal. Civ. Code § 1788.11(d).
28

1 40. Defendant communicated with Plaintiff with such frequency as to be
2 unreasonable, constituting harassment, in violation of Cal. Civ. Code § 1788.11(e).

3
4 41. Defendant did not comply with the provisions of 15 U.S.C. § 1692, *et*
5 *seq.*, in violation of Cal. Civ. Code § 1788.17.

6
7 42. Plaintiff was harmed and is entitled to damages as a result of Defendant's
8 violations.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment against Defendant for:

12 A. Statutory damages of \$500.00 for each call determined to be in violation
13 of the TCPA pursuant to 47 U.S.C. § 227(b)(3);

14
15 B. Treble damages for each violation determined to be willful and/or
16 knowing under the TCPA pursuant to 47 U.S.C. § 227(b)(3);

17
18 C. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);

19 D. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);

20
21 E. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);

22 F. Statutory damages of \$1,000.00 for knowingly and willfully committing
23 violations pursuant to Cal. Civ. Code § 1788.30(b);

24
25 G. Costs of litigation and reasonable attorneys' fees pursuant to 15 U.S.C.
26 § 1692k(a)(3) and Cal. Civ. Code § 1788.30(c);

27 H. Punitive damages; and
28

I. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: July 15, 2016

TRINETTE G. KENT

By: /s/ Trinette G. Kent
Trinette G. Kent, Esq.
Lemberg Law, LLC
Attorney for Plaintiff, Maisie Kelly